

## **Chapter 21.04**

### **DEFINITIONS**

**21.04.027 Alter.**

“Alter” means any change to the interior or exterior of a structure that does not result in an increase to the gross floor area of the structure.

**21.04.140.1 Expansion.**

“Expansion” means to enlarge or increase the size of an existing structure or use including the physical size of the property, building, parking and other improvements.

**21.04.275 Nonconforming structure.**

“Nonconforming structure” means a structure, or portion thereof, which was lawfully erected or altered and maintained, but which, because of the application of this title to it, no longer conforms to the current requirements and development standards of the zone in which it is located. (Ord. 9060 § 254)

**21.04.278 Nonconforming lot.**

“Nonconforming lot” means a lot which was legally created, but which, because of the application of this title to it, no longer conforms to the current requirements and development standards of the zone in which it is located.

**21.04.280 Nonconforming non-residential use.**

“Nonconforming non-residential use” means a non-residential use which was lawfully established and maintained, but which, because of the application of this title to it, no longer conforms to the current use regulations of the zone in which it is located.

**21.04.281 Nonconforming residential use.**

“Nonconforming residential use” means a residential use which was lawfully established and maintained, but which exceeds the Growth Management Control Point or the maximum density range of the underlying General Plan Land Use designation

**21.04.299.1 Repair.**

“Repair” means any improvements to correct deficiencies in a building or structure.

**21.04.299.2 Replace.**

“Replace” means to construct a structure that is substantially equivalent in size, shape and location to a structure that has been destroyed or demolished.

**21.04. 354 Structure.**

“Structure” means anything constructed or erected which requires location on the ground or attached to something having a location on the ground, but not including fences or walls used as fences six feet or less in height. All buildings are structures.

(Ord. 9060 § 269)

**21.04.355 Substandard lot.**  
See “Nonconforming lot”.

---

Chapter 21.46

YARDS

---

## **Chapter 21.48**

### **NONCONFORMING LOTS, STRUCTURES AND USES**

#### **Sections:**

- 21.48.010 Purpose and intent.**
- 21.48.020 Applicability.**
- 21.48.030 General provisions.**
- 21.48.040 Nonconforming lots.**
- 21.48.050 Nonconforming residential structures and uses.**
- 21.48.060 Nonconforming non-residential structures.**
- 21.48.070 Nonconforming non-residential uses.**
- 21.48.080 Nonconforming construction permit.**
- 21.48.090 Abatement of nonconforming structures and uses.**

#### **21.48.010 Purpose and intent.**

- A. The purpose and intent of this chapter is to:
  - 1. Allow for the development of nonconforming lots that were legally created.
  - 2. Establish procedures for the abatement of structures and uses that do not comply with all of the requirements and development standards of this title and which may be adverse to the orderly development of the city and to the public health, safety, or welfare of persons or property.
  - 3. Permit the continuation of uses and continued occupancy and maintenance of structures that were legally established but do not comply with all of the requirements and development standards of this title, in a manner that is not adverse to the public health, safety or welfare of persons or property.
  - 4. Permit the repair, alteration, expansion or replacement of nonconforming structures subject to the regulations herein.
  - 5. Permit the expansion or replacement of nonconforming uses subject to the regulations herein.

#### **21.48.020 Applicability.**

- A. The provisions of this chapter apply to:
  - 1. Legally created lots which do not conform to the current requirements and development standards of the zone in which they are located.
  - 2. Legally constructed structures and site development features (except for nonconforming signs which are addressed in Section 21.41.130) which do not comply with the current requirements and development standards of the zone in which they are located.
  - 3. Legally established uses which do not conform to the current permitted use regulations of the zone in which they are located.

**21.48.030 General provisions.**

A. It shall be the responsibility of the owner of a nonconforming lot, structure or use to prove to the planning director that such lot, structure or use was lawfully established, existed on the date of adoption or amendment of this chapter, and has existed continuously as defined herein.

B. Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any structure or part thereof declared to be unsafe by any city official charged with protecting the public safety, upon order of such official. Repairs and alterations may be made to restore a structure to the same condition that existed prior to damage or deterioration, provided that such repairs or structural alterations conform to the provisions of this chapter.

**21.48.040 Nonconforming lots.**

A. A nonconforming lot may be developed, provided that the development is consistent with the General Plan and complies with all of the requirements and development standards of the zone, master plan, or specific plan in which it is located.

**21.48.050 Nonconforming residential structures and uses.**

A. Specific Provisions.

1. A nonconforming residential structure and/or nonconforming residential use may be continued and the structure and/or use repaired, altered, expanded or replaced in accordance with the provisions of this chapter provided that the repair, alteration, expansion or replacement shall not:

a. Create an additional structural nonconformity; and,

b. Increase the degree of the existing nonconformity of all or part of such structure or use; and,

c. Reduce the number and size of any required existing parking spaces.

B. Repair or Alteration.

1. A nonconforming residential structure and/or a structure which is occupied by a nonconforming residential use may be repaired or altered subject to issuance of all required discretionary and building permits, provided that the repair or alteration complies with all current fire protection and building codes and regulations contained in Title 17 and Title 18.

C. Expansion.

1. A nonconforming residential structure and/or a nonconforming residential use may be expanded, so as to occupy a greater area of land or more floor area subject to issuance of all required discretionary and building permits and provided that an application for a nonconforming construction permit is submitted and the planning director approves the findings of fact pursuant to Section 21.48.080(B).

D. Replacement in the Event of a Disaster.

1. A nonconforming residential structure and/or nonconforming residential use that is destroyed by fire, explosion, or other casualty or natural disaster, may be replaced subject to issuance of all required discretionary and building permits and provided that an application for a nonconforming construction permit is submitted within

one year of the date of the disaster and the planning director approves the findings of fact pursuant to Section 21.48.080(B).

E. Voluntary Demolition and Subsequent Replacement.

1. A nonconforming residential structure and/or nonconforming residential use that is proposed to be voluntarily demolished may be replaced subject to issuance of all required discretionary and building permits and provided that an application for a nonconforming construction permit is submitted and the planning director approves the findings of fact pursuant to Section 21.48.080(B) prior to the date of the demolition.

**21.48.060 Nonconforming non-residential structures.**

A. Specific Provisions.

1. A nonconforming non-residential structure may be continued and the structure repaired, altered, expanded or replaced in accordance with the provisions of this chapter provided that the repair, alteration, expansion or replacement shall not:

a. Create an additional structural nonconformity; and,

b. Increase the degree of the existing nonconformity of all or part of such structure; and,

c. Reduce the number and size of any required existing parking spaces.

B. Repair or Alteration.

1. A nonconforming non-residential structure may be repaired or altered subject to issuance of all required discretionary and building permits, provided that the repair or alteration complies with all current fire protection and building codes and regulations contained in Title 17 and Title 18.

C. Expansion.

1. A nonconforming non-residential structure may be expanded, so as to occupy a greater area of land or more floor area subject to issuance of all required discretionary and building permits and provided that an application for a nonconforming construction permit is submitted and the planning director approves the findings of fact pursuant to Section 21.48.080(B).

D. Replacement in the Event of a Disaster.

1. A nonconforming non-residential structure that is destroyed by fire, explosion, or other casualty or natural disaster, may be replaced subject to issuance of all required discretionary and building permits and provided that an application for a nonconforming construction permit is submitted within one year of the date of the disaster and the planning director approves the findings of fact pursuant to Section 21.48.080(B).

E. Voluntary Demolition and Subsequent Replacement.

1. A nonconforming non-residential structure that is proposed to be voluntarily demolished may be replaced subject to issuance of all required discretionary and building permits and provided that an application for a nonconforming construction permit is submitted and the planning director approves the findings of fact pursuant to Section 21.48.080(B) prior to the date of the demolition.

**21.48.070 Nonconforming non-residential uses.**

A. Specific Provisions.

1. A nonconforming non-residential use and/or structure which is occupied by a nonconforming non-residential use may be continued and the structure and/or use repaired, altered, expanded or replaced in accordance with the provisions of this chapter provided that the repair, alteration, expansion or replacement shall not:

a. Increase the degree of the existing nonconformity of all or part of such structure or use; and,

b. Reduce the number and size of any required existing parking spaces.

B. Repair or Alteration.

1. A structure which is occupied by a nonconforming non-residential use may be repaired or altered subject to issuance of all required discretionary and building permits, provided that the repair or alteration complies with all current fire protection and building codes and regulations contained in Title 17 and Title 18.

C. Expansion of Use.

1. A nonconforming non-residential use may be expanded, so as to occupy a greater area of land or more floor area within a structure, subject to issuance of all required discretionary and building permits, provided that an application for a conditional use permit is submitted and the planning commission approves the findings of fact pursuant to Section 21.42.030(A).

D. Relocation.

1. A nonconforming non-residential use may be moved, in whole or in part, to any other on-site structure, or to any other portion of the structure, lot or site within or upon which it is located, subject to issuance of all required discretionary and building permits and provided that an application for a conditional use permit is submitted and the planning commission approves the findings of fact pursuant to Section 21.42.030(A).

E. Change of Use.

1. A nonconforming non-residential use may be changed to a use that is permitted in the zone in which the subject property is located, or may be changed to a use that is more conforming, subject to approval of the planning director and the issuance of a business license.

F. Replacement of Use.

1. A nonconforming non-residential use may be replaced with the same or a similar use, as determined by the planning director, so long as the replacement use does not expand or in any other manner increase the degree of nonconformity with the use regulations of this title.

G. Discontinuance.

1. If a structure or parcel of land which is occupied by a nonconforming non-residential use is, or hereafter becomes vacant and remains unoccupied either temporarily or permanently, whether with the intent to abandon the use or not, for a continuous period of one year or more, the planning director shall determine and shall notify the owner of the property, via certified return receipt mail, that the nonconforming use has been discontinued and the nonconforming use may not be renewed or reestablished.

H. Reestablishment of a Nonconforming Use in the Event of a Disaster.

1. A nonconforming non-residential use that is destroyed by fire, explosion, other casualty or natural disaster, may be reestablished subject to issuance of all required discretionary and building permits and provided that an application for a conditional use permit is submitted within one year of the date of the disaster, and the planning commission approves the findings of fact pursuant to Section 21.42.030(A).

I. Voluntary Demolition and Subsequent Reconstruction.

1. A nonconforming non-residential use that is proposed to be voluntarily demolished and subsequently reconstructed, may be reestablished subject to issuance of all required discretionary and building permits and provided that an application for a conditional use permit is submitted and the planning commission approves the findings of fact pursuant to Section 21.42.030(A) prior to the demolition.

**21.48.080 Nonconforming construction permit.**

A. Authority.

1. The planning director or his designee may approve, conditionally approve or deny a nonconforming construction permit as prescribed in this chapter, upon making the findings of fact listed in Section 21.42.080(B) of this chapter.

B. Findings of Fact.

1. A nonconforming construction permit shall be granted only if the following facts are found to exist in regard thereto:

a. The expansion/replacement of the structure and/or use would not result in an adverse impact to the health, safety and welfare of surrounding uses, persons or property.

b. The area of expansion shall comply with all current requirements and development standards of the zone in which it is located.

c. The expansion/replacement structure shall comply with all current fire protection and building codes and regulations contained in Title 17 and Title 18.

d. The expansion/replacement would result in a structure that would be considered an improvement to, or complementary to and/or consistent with the character of the neighborhood in which it is located.

C. Application and Fees.

1. Application for a nonconforming construction permit may be made by the owner of the property affected or the authorized agent of the owner. Application shall be made in writing on a form provided by the planning department. The application shall state fully the circumstances and conditions relied upon as grounds for the application and shall be accompanied by adequate plans, a legal description of the property involved and all other materials as specified by the planning department.

2. At the time of filing the application, the applicant shall pay a processing fee in an amount as specified by city council resolution.

D. Notices.

1. Upon the filing of an application for a nonconforming construction permit, the planning director shall give written notice by mail or personal delivery to the project applicant, the owner of the subject real property or the owner's duly authorized agent and to all property owners as shown on the latest equalized assessment roll within three hundred feet of the subject property at least fifteen days prior to a decision on the

application.

E. Decision-Making Process.

1. Applications for nonconforming construction permits shall be acted upon in accordance with the decision process identified below:

a. Any person so notified in accordance with Section 21.48.080(D) above may file written objections or a written request to be heard within ten days after the mailing or personal delivery of the notice. If a written request to be heard is filed, the planning director shall schedule an informal hearing and provide written notice to the applicant and the requestor at least five days prior to the hearing. The hearing is not a formal public hearing.

b. An application for a nonconforming construction permit may be approved, conditionally approved or denied by the planning director based upon his/her review of the facts as set forth in the application and review of the circumstances of the particular case.

c. The planning director may approve the nonconforming construction permit if all of the findings of fact in Section 21.48.080(B) of this chapter are found to exist.

F. Announcement of Findings and Decision.

1. Not more than twenty days following the termination of the proceedings for a nonconforming construction permit, the planning director shall announce his/her findings by letter. The letter shall recite, among other things:

a. The facts and reasons which, in the opinion of the planning director, make the granting or denial of the nonconforming construction permit necessary to carry out the provisions and general purpose of this title;

b. That the nonconforming construction permit be granted or denied; and,

c. If the letter orders that the nonconforming construction permit be granted, it shall also recite such conditions and limitations as the planning director may impose.

G. Mailing of Notice of Decision.

1. Not later than seven days following the announcement of a decision ordering that a nonconforming construction permit be granted or denied, a copy of the letter shall be mailed to the applicant at the address shown on the application filed with the planning director.

H. Appeals.

1. In the case of nonconforming construction permits, the action of the planning director may be appealed to the planning commission in accordance with Section 21.54.140 of this title. The planning commission's action to approve, conditionally approve or deny is final.

I. Expiration Period.

1. Expiration of Permit if Not Exercised.

a. Any nonconforming construction permit becomes null and void if not exercised within twenty-four months of the date of approval.

2. Extension of Permit if Not Exercised.

a. The planning director may extend the time within which the right or privilege granted under a nonconforming construction permit must be exercised for one additional year upon receipt of a written request from the applicant prior to the expiration



of such nonconforming construction permit. In granting such extension the planning director shall make a written finding that neighborhood conditions have not substantially changed since the granting of such nonconforming construction permit.

J. Amendment.

1. Any approved nonconforming construction permit may be amended by following the same procedure as for approval of a nonconforming construction permit and upon payment of the application fee contained in the most recent fee schedule adopted by the city council.

**21.48.090 Abatement of nonconforming structures and uses.**

A. If a nonconforming use and/or structure is determined by the planning director to be adverse to the orderly development of the city and/or to the public health, safety, or welfare of persons or property, the planning director shall schedule a public hearing by the planning commission to establish the conditions of abatement and the abatement period. The abatement period shall start from the date of the applicable resolution and shall be:

1. For all Residential Uses.

a. Not less than one or more than five years.

2. For all Non-Residential Uses.

a. Not less than one or more than ten years.

3. For all Nonconforming Structures.

a. Not less than three years or more than twenty-five years.

4. Nothing in these provisions shall preclude abatement of a nuisance pursuant to Section 6.16.150 of the Carlsbad Municipal Code.

B. Public Hearing Notice.

1. Notice of said public hearing shall be given as required by Section 21.54.060.

C. Public Hearing Evidence.

1. The planning commission shall consider at the public hearing, all pertinent data to enable it to arrive at an equitable abatement period which will protect the public health, safety or welfare of persons or property, yet will allow the owner of record, or lessee if applicable, to amortize their investment so that any loss will be minimized.

2. The owner or lessee shall be allowed to present any evidence related to the case.

3. When setting the abatement period, the planning commission shall take into consideration the type of construction, age, condition, and extent of nonconformity of the structure or use in question; any structural alterations or expansions; and/or the installation of major equipment designed into the structure prior to the date of nonconformity.

D. Hearing Decision.

1. After the close of the public hearing, the planning commission shall determine and establish by resolution the abatement period, and shall set forth in said resolution all findings and facts upon which the date of such abatement period is based.

E. Notice of Decision to Owner.

1. The secretary of the planning commission shall formally notify the owner of the property of the action of the planning commission by mailing a copy of the resolution, via certified return receipt mail, within ten days following the date of its adoption by the planning commission.

F. Appeal.

1. The above action of the planning commission shall be final unless an appeal to the city council is filed in accordance with the procedure provided in Section 21.54.150.

G. Recordation.

1. The secretary of the planning commission shall transmit a final signed copy of the resolution of the planning commission or city council, whichever is final, to the County Recorder of San Diego for recordation.

Chapter 21.04 – DEFINITIONS (*Existing definitions are for reference*)

**21.04.050 Building.**

“Building” means any structure having a roof, including all forms of inhabitable vehicles even though immobilized. Where this title requires, or where special authority granted pursuant to this title requires that a use shall be enclosed within a building, this definition shall be qualified by adding “and enclosed on all sides.”  
(Ord. 9060 § 211)

**21.42.210 Lot.**

"Lot" means a parcel of record legally created by subdivision map, adjustment plat, certificate of compliance or a parcel legally in existence prior to incorporation of the lot into the jurisdiction of the city. Any parcel created prior to May 1, 1956, shall be presumed to be lawfully created if the parcel resulted from a division of land in which fewer than five parcels were created. A lot shall have frontage that allows usable access on a dedicated public street accepted by the city. This street or easement shall have a minimum right-of-way width of forty-two feet. Special lot and street configurations for affordable housing projects may be allowed subject to the provisions of Section 21.53.120.

(Ord. NS-602 § 1, 2001: Ord. 207 § 7, 1992: Ord. 9605 § 1, 1981: Ord. 9459 § 1 (part), 1976: Ord. 9060 § 241)